

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
High-Cost Universal Service Support)	WC Docket No. 05-337

INITIAL COMMENTS

Introduction

The Indiana Utility Regulatory Commission (Commission) respectfully requests an exception and waiver of time and/or filing requirements in order to provide these late-filed comments to address the Notice of Inquiry (NOI) and Notice of Proposed Rulemaking (NPRM) released by the Federal Communications Commission (FCC) on April 21, 2010, relating to the proposed Connect America Fund, the National Broadband Plan (The Plan), and the High-Cost Universal Service Support in WC Docket No. 10-90, GN Docket No. 09-51, and WC Docket No. 05-337.

The NOI includes interim recommendations to extend broadband support to 14 million unserved Americans in 7 million households, as well as a reallocation of funds to fill a funding “availability gap” of \$23.5 billion. *This \$23.5 billion shortfall between estimated costs and revenues does not include existing dollar amounts used to support “legacy” voice programs.* The NPRM proposes to “reform” or end existing federal universal service support programs for “legacy” voice services and to eventually replace them primarily, if not almost exclusively, with support for capital expenditures involving both broadband and voice services, relying very heavily on wireless technologies to do so.¹ The FCC needs to ensure that the national debate on the relationship among intercarrier compensation, universal service, and broadband is both

¹ NBP: Executive Summary, Long-Term Goal No. 2; ch. 5, ch. 4, Recommendation No. 1.

broad-based and well-informed, and is explicitly linked to the appropriate NOIs, NPRMs, and Further Notice of Proposed Rulemakings (FNPRMs), as well as to the Plan.

The Commission is concerned about the potential impact of the FCC's proposals on the Indiana Universal Service Fund (IUSF), the willingness or ability of some incumbent local exchange carriers (ILECs) to continue serving as providers of last resort (POLR), and, ironically, even the availability of broadband, as impacted by the continued viability of rural local exchange carriers (RLECs) already delivering broadband services extensively, if existing "legacy" USF support is withdrawn.

The NOI and NPRM Should be Viewed within the Context of The National Broadband Plan and Proposed Intercarrier Compensation Reform and other Reform Efforts, Not As a Stand-Alone Document

The FCC should make explicitly clear in the record of all three proceedings, not just in the Plan:

1. Its intent to modify the existing list of supported services (e.g., to include broadband or other non-legacy voice services); the FCC should refer such actions to the Federal State Joint Board on Universal Service ("Joint Board").
2. Its proposal to shift support from providers that only offer plain old telephone service (POTS) to those that offer broadband platforms, plus voice and other IP applications that ride over the Internet.
3. A clear, explicit and universally-applicable cross-technology definition of what constitutes "broadband."

The April 21, 2010 Notice of Proposed Rulemaking on universal service issues is a transformational document. This NPRM is revolutionary, not evolutionary. The FCC is not seeking to revise and reform existing USF programs merely to make them run more efficiently, or to eliminate exploitation and abuse, or even to begin supporting the use of circuit-switched networks and facilities to provide broadband services. Rather, the FCC is seeking to use the universal service process to create *de novo* programs that will support a fundamental paradigm

shift - not just of the universal service programs, themselves, but of the communications ecosystem as a whole.

The FCC seeks to implement a support mechanism that will provide funding for the middle mile and other components of broadband networks, not just the “last mile”.² It is not enough to describe these various paradigm shifts and disruptive technologies and their relationship to universal service reform in the Plan (particularly in chapter 8). The FCC should clearly identify them, and their relationship to the NOI and NPRM, in the record not only of GN Docket No. 09-51 but also in the record of WC Docket No. 10-90 and WC Docket No. 05-337, so that all interested parties are fully aware of the origin and purpose of the proposed USF reforms.

This will ensure that the national debate that has begun on the relationship between “broadband” and universal service will be both broad-based and well-informed. The FCC should explain these relationships more clearly in the forthcoming “USF transformation” FNPRM currently expected in the fourth quarter of this year and in other relevant NPRM, FNPRM, or NOI documents.³

Our concern is not that people are unaware of the transition to an all-IP world. Rather, we are concerned that the FCC has not made explicit the role it expects universal service mechanisms to play in that transition.

Commission General Comments and Concerns

Notwithstanding the enormous amount of work that has gone into developing this NPRM and the underlying National Broadband Plan, insufficient analysis has been done regarding the potential impact of some of the FCC’s proposals on small and mid-size rural ILECs and their customers. Furthermore, even though the primary purpose of the Plan is to increase the availability of broadband, insufficient thought has been given to the potential for a contrary

² NBP, ch. 8.

³ For example, the NBP Action Agenda indicates that the USF transformation NPRM, and other NPRMs on USF contributions and on intercarrier compensation, are all expected to be released in the fourth quarter. A Mobility Fund NPRM is expected in the third quarter.

outcome if the proposals in the NPRM are implemented. (e.g., decreases in the short-term availability of broadband for customers of those RLECs). Reducing that support under the fiction that it is solely for “legacy voice services”, because of a belief that fixed wireless service will have a higher net present value (NPV), could adversely affect the availability of both circuit-switched voice and broadband, VoIP or other IP-enabled services. While the support for RLECs has historically been provided “for legacy voice services,” the reality is that the monies received have supported the entire enterprise, including the build out of broadband and the network that sustains it, for a high percentage of rural customers.

We believe that some cost containment measures definitely need to be implemented. The proposal to eliminate high-cost support for competitive eligible telecommunications carriers has value, because supporting multiple service providers within the same high cost area is inefficient and illogical. The Commission believes high-cost support should be provided to the least number of carriers and areas necessary to achieve universal service. The Commission also believes that providing ongoing support to only one recipient per study area is a way to minimize the size of the fund and still maintain the universal service principles of the Telecommunications Act of 1996 (The Act).

For example, while we believe that competition can provide many benefits to both individual consumers and to society as a whole, USF reforms should not be used as a means of artificially fostering competition for broadband or other services. We agree that there should be, at most, one subsidized or supported provider of broadband per geographic area. Support should only be provided to facilities-based providers. Furthermore, any support that is provided to Competitive Eligible Telecommunications Carriers (CETCs) should be based on the CETC’s own documented costs, not the costs of the incumbent or other providers.⁴

The Commission has focused its analysis primarily on the NPRM. However, we believe two aspects of the NOI warrant mentioning in initial comments.

⁴ We recognize that there are many different ways of calculating and allocating a CETC’s own costs. We are not taking a position on those issues here.

1. The FCC has acknowledged that its model will *significantly* underestimate the \$23.5 billion availability gap⁵ in certain unserved areas because it assumes that existing networks will be available on an ongoing basis without considering existing USF support⁶. Prior to enacting programs that would either require “significant” increases to the overall size of the fund (including, but not limited to, programs to meet the broadband “availability gap”), or dramatically repurpose the uses of existing funds, the FCC should refer the related funding and contribution issues to the Joint Board in CC Docket No. 96-45. As a threshold matter, the FCC needs to quantify this significant understatement of the availability gap it acknowledges will likely occur due to the exclusion of existing high-cost support from the model.
2. Given the aspirational goal of “100 Mb/s downstream, 50 Mb/s upstream to 100 million households” **the FCC’s proposed 4 Mb/s downstream and 1 Mb/s upstream speeds for unserved areas, to the extent they are implemented only in rural areas, may well violate the spirit if not the letter of Congressional intent in 47 U.S.C. § 254(b)(3) which requires, “Consumers in all regions of the Nation, including ... those in rural, insular, and high cost areas, should have access to telecommunications and information services ... that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”**

It is critical for the FCC to view USF reform holistically.

The FCC seeks comment “on the relationship between such universal service reforms [cutting legacy high-cost support and adding new broadband support] and carriers’ rates, including intercarrier compensation rates, under the Commission’s current pricing rules”. It is critical for the FCC and all parties to view USF reform holistically and in combination with access charge reform, intercarrier compensation reform, technological change and broadband deployment, separations reform, deliberations on the regulatory classification and treatment of

⁵ NOI, n. 76.

⁶ NOI, para. 33.

IP-enabled services⁷, deliberations on the “Third Way,”⁸ and policies regarding what constitutes competition in the communications industry, as well as when it is inappropriate to “drive” or artificially foster competition.

USF support and access charge revenue play a critical role for many small and mid-size companies. The Commission is aware that the typical Indiana rural company receives a substantial proportion (typically about half) of its regulated revenues from universal service support and access charges. We are concerned that not enough thought has been given to the potential impact of eliminating or drastically reducing existing federal support amounts, on individual small and mid-size companies.

The FCC’s Action Agenda for the Plan lists 41 separate NPRMs, NOIs, FNPRMs, and Orders, plus a number of workshops or other actions planned before the end of 2010 to implement portions of the Plan.⁹ As noted, the “USF transformation” FNPRM and the intercarrier compensation NPRM are both expected to be released in the fourth quarter of 2010. While implementing the Plan in smaller parts may make the work effort more manageable and more efficient, it has also created the fiction that the impact of the implementation is likely to be small. This is unlikely to be the case.

Because of the FCC’s assumptions that: (1) high-cost loop support should be eliminated because some companies are using it to recover costs for DSL loops and (2) providing broadband service using fixed wireless technologies would have a higher net present value (NPV) than DSL with 12,000 foot loops east of the Mississippi River and that interim “availability gap” support should therefore be directed toward those services instead of DSL providers, it is unclear whether Indiana’s small and mid-size ILECs would be eligible for any “replacement” funding to make up for the loss of support for legacy POTS.

⁷ *In the Matter of IP-Enabled Services*, WC Docket No. 04-36.

⁸ *In the Matter of Framework for Broadband Internet Service, Notice of Inquiry*, GN Docket No. 10-127 (FCC 10-114, rel. June 17, 2010).

⁹ <http://www.broadband.gov/plan/broadband-action-agenda-items.html>

The FCC should refer the related funding and contribution issues to the Joint Board.

Prior to taking steps that could require *significant* increases to the overall size of the fund (including, but not limited to, CAF programs to meet the “availability gap”)¹⁰, the FCC should refer the related funding and contribution issues to the Joint Board.

The FCC should specify new ETC certification requirements in light of proposed changes to existing USF programs or the creation of new programs.

The FCC should re-examine existing ETC certification requirements to determine what new requirements, or modifications, would be needed if support is shifted from a “legacy” POTS framework to broadband networks that support multiple applications including VoIP. Any expansion of eligibility rules – e.g., to increase the availability of broadband – should be balanced with the need to control the size of the federal fund(s). For example, the FCC needs to reexamine the question of whether non-facilities-based carriers should be eligible for federal support – and, if so, what types and levels of support are appropriate, particularly in areas where an existing facilities-based provider is already providing service.

If the FCC intends to eliminate High Cost Loop Support, parties should have the opportunity to comment specifically on the implications of that action.

When taken together, Paragraph 53 and footnote 119 in the NPRM suggest that the FCC plans to eliminate or dramatically reduce the amount of available high-cost loop support funding. The Plan certainly advocates such a policy shift,¹¹ based on the FCC’s concerns that such support is being used to help pay for services other than legacy voice services, particularly DSL services, but also possibly video or other services. Certainly, RLECs use loops to provide DSL service, so it should not be a surprise if high cost loop support were being used to “pay” for DSL service. The FCC should explicitly state whether it intends to: (1) eliminate high cost loop support funding or (2) reduce the amount of high cost loop support funding and by how much. If it does, an explicit statement of such intent should be coupled with an opportunity for parties to file comments on the implications of taking such actions.

¹⁰ NOI, para. 33 & n. 76.

¹¹ See, e.g., NBP, Section 8.3.

The FCC must consider the effect these proposals could have on state commissions and telecommunications customers throughout the country.

The FCC should explicitly state, on the record, the nature of its intent to modify the list of supported services.

The FCC should explicitly state in the records of WC Docket No. 10-90, GN Docket No. 09-51, and WC Docket No. 05-337 whether it intends to make any changes to the list of federally supported services (currently listed at 47 CFR § 54.101(a)) – e.g., deleting existing services and adding “broadband”, advanced services, VoIP service, and/or other IP-enabled services. If the FCC is, in fact, seeking changes to the list of supported services, it should refer the specific proposed changes to the Joint Board in CC Docket No. 96-45.

The FCC shift of support from POTS to Broadband would have a dramatic effect on State Universal Service Funds.

The FCC should make clear in the record of the instant proceedings its proposal to shift support from providers that only offer POTS and related services to those that offer broadband platforms, voice and other applications that ride over the Internet.

We are concerned about potential effects of some of the FCC’s proposals upon the IUSF. While it is unlikely that all ILECs receiving support would be affected in the same manner or to the same extent if the FCC’s proposals were implemented, we are concerned that at least some individual RLECs could experience serious, perhaps critical adverse financial circumstances as a result of some of the FCC’s proposals. If federal USF support is eliminated, and particularly if ILECs are *de facto*, if not *de jure*, ineligible for broadband support, then some RLECs currently receiving federal high cost loop support might seek additional support from the IUSF or they may consider cessation of service in some of their service territories. Meanwhile, those same RLECs receive scant recognition for their successful efforts to build out broadband services to a high percentage of customers. The FCC’s proposal in effect has the impact of punishing those RLECs that have invested in the future, rather than sitting on their earnings.

Some “served” areas today could become totally “unserved” areas tomorrow, if current federal support is withdrawn or drastically reduced.

If the FCC goes forward with repurposing existing legacy voice USF support to fund broadband build out, it should consider the effect these policies could have on state commissions and telecommunications customers throughout the country. The Commission is concerned that some RLECs might seek to abandon parts or, in extreme circumstances, all of their service territory if existing federal support is taken away. Some “served” areas could become “unserved” areas tomorrow, if current federal support is withdrawn or drastically reduced *without fully understanding the consequences* thereof. Thus, some of the FCC’s proposals concern us, not only because of the public policy implications, but also because of the impact they could have on individual voice and existing broadband *customers*.

Indiana statute allows a POLR to cease providing service in portions of its service area and thereby relinquish its obligation as provider of last resort upon sixty (60) days notice to the Commission and affected customers. The Commission is then charged with designating a successor provider. Upon receipt of such notice, if there is not another certificated provider that has facilities fully capable of providing basic telecommunications service in that area, the Commission shall conduct a formal proceeding to determine the successor provider. This is mandated to be accomplished within sixty (60) days of receiving notice to avoid interruption of customers’ telecommunications service. The risk of extended interruption of services for customers is significant.

Proposed funding shifts that could and very well may lead to RLECs abandoning their provider of last resort functions in Indiana and other states must in our opinion be closely examined. Additionally, current policies and practices designed to implement 47 U.S.C. 251(h)(2) (treatment of comparable carriers as incumbents) may also need to be reviewed.

We support initiatives to control the size of the High-Cost Program and eliminate dysfunctionalities in High-Cost Support.

According to the NPRM (paragraphs 53 - 62), the Plan “recommends that the [FCC] cut inefficient funding of legacy voice service and refocus universal service funding to directly support modern communications networks that will provide broadband as well as voice service”

[emphasis added].”¹² Given the FCC’s proposals elsewhere to phase out or eliminate much of the existing high-cost support, we must surmise that this proposal is to fund buildout for VoIP or other IP-enabled voice services that would operate as applications on the Internet. This proposal is yet another fundamental paradigm shift, the implications of which are not developed in the NPRM but should be developed prior to further action by the FCC.

We note that the NPRM does not explicitly advocate eliminating or reducing the amount of high-cost loop support funding available. However, when taken together, paragraph 53 and footnote 119 in the NPRM suggest that the FCC may well be planning to take that step.

The FCC is sending mixed messages. On one hand, it says, “The [NBP] recognizes that shifting funds [from legacy voice support to broadband support] could have transitional impacts and recommends that “[a]s the FCC considers this policy shift, it should take into account the impact of potential changes in free cash flows on providers’ ability to continue to provide voice service and on future broadband network deployment strategies.”¹³ When compared to the transformational changes articulated in the Plan, the NOI, and the NPRM, this comment appears to be little more than a throw-away. Nonetheless, this suggests the FCC assumes RLECs would continue to play an important role in providing broadband services in the future and would warrant some level of ongoing broadband support, but all documents are silent on the extent of that support.

On the other hand, the FCC has made very clear that it will rely very heavily on wireless technology to provide broadband services in the future.¹⁴ Furthermore, according to the FCC, “The intent of these proposals [for shifting federal USF support to broadband] is to eliminate the indirect funding of broadband-capable networks today through our legacy high-cost programs, which is occurring without transparency or accountability for the use of funds to extend broadband service.”¹⁵ With these and other statements in the NPRM about the need to replace

¹² NPRM, para. 50, referring to NBP at 147-148. *See, also*, NBP, ch. 8.3 (“Comprehensive Reform”).

¹³ NPRM, n. 118, referring to NBP at 147.

¹⁴ Plan, Executive Summary, Long-Term Goal No. 2; ch. 5; ch. 4, Recommendation No. 1.

¹⁵ NPRM, para. 53. Footnote in original omitted in this quote.

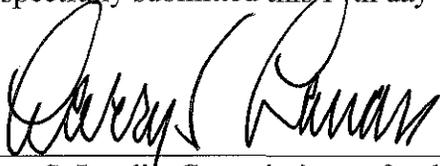
“legacy” universal service support with support for broadband, the FCC signals its intent to effectively redefine the list of supported services currently set forth at 47 CFR § 54.101(a), even though the NPRM does not include a statement to that effect. The FCC must also clarify this matter.

Conclusion

The Commission recognizes the enormous amount of time and effort invested in the development of this NPRM and the underlying National Broadband Plan; however, we are very concerned that speed is being given a higher priority than getting the right results. These comments focus explicitly on areas of concern, rather than on other areas where long overdue concerns are now being identified and targeted for reform. It is in the nature of this process that we focus on what we view as deficiencies. We have sought to point out areas of concern regarding proposals that we believe could, if implemented, result in unanticipated consequences and significant harm. We have recommended referral of two issues to the Joint Board: (1) modification of the list of federally supported services (*see*, 47 CFR § 54.101(a)) and (2) funding or contribution issues that could affect the overall size of the fund. Finally, we have also posed questions regarding areas of the NPRM that we believe are unclear and provided recommendations.

We appreciate the opportunity to provide comment.

Respectfully submitted this 14th day of July, 2010,



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Indiana Utility Regulatory Commission